

A RESOLUTION

BY PUBLIC SAFETY AND LEGAL ADMINSTRATION COMMITTEE, AS SUBSTITUTED BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, A MUTUAL DISSOLUTION AGREEMENT WITH UNITED WATER SERVICES UNLIMITED ATLANTA LLC, UNITED WATER RESOURCES INC. AND **ONDEO** NORTH **AMERICA** INC. F/K/A **LYONNAISE** AMERICAN HOLDING, INC. CONCERNING THE SETTLEMENT OF CERTAIN FINANCIAL CLAIMS AMONG THE PARTIES EXISTING PRIOR TO JANUARY 1, 2003, UNDER A TWENTY-YEAR OPERATIONS AND MAINTENANCE AGREEMENT OF SYSTEM, AND THE AMICABLE DISSOLUTION OF THEIR PARTNERSHIP UNDER THE O&M AGREEMENT AND THE ORDERLY TRANSITION OF THE **OPERATION** MAINTENANCE OF THE SYSTEM AND CERTAIN EMPLOYEES OF UNITED WATER SERVICES UNLIMITED ATLANTA LLC TO THE CITY; AUTHORIZING THE CITY TO ACCEPT CERTAIN SETTLEMENT PAYMENTS FROM UNITED WATER SERVICES UNLIMITED ATLANTA LLC, TO COMPENSATE UNITED WATER SERVICES UNLIMITED ATLANTA LLC FOR CERTAIN ADDITIONAL WORK SCOPE ITEMS AND OTHER MATTERS ASSOCIATED WITH THE DISSOLUTION AND TO PAY THIRD-PARTIES CERTAIN MONIES IN CONNECTION WITH SERVICES RELATED TO THE DISSOLUTION; AND FOR OTHER PURPOSES.

BACKGROUND:

WHEREAS, the City and United Water Services Atlanta LLC ("UWSA") entered into a Twenty-Year Operations and Maintenance Agreement of System ("O&M Agreement") on December 24, 1998;

WHEREAS, the Commencement Date of the O&M Agreement between the parties was January 1, 1999;

WHEREAS, pursuant to the O&M Agreement, UWSA agreed, among other things, to operate and maintain the City's Water System;

WHEREAS, the City retained ownership of the System;



WHEREAS, United Water Resources Inc. ("United Water Resources") and its affiliate, Ondeo Services North America, Inc., f/k/a Lyonnaise American Holding, Inc. ("Ondeo"), executed an unconditional guaranty of UWSA's obligations under the O&M Agreement;

WHEREAS, the City, UWSA, United Water Resources and Ondeo now desire to amicably dissolve their partnership under the O&M Agreement and to effect an orderly transition of the operation and maintenance of the System and certain employees of UWSA to the City, pursuant to the processes set forth in that certain Mutual Dissolution Agreement ("MDA") attached to this Resolution as Exhibit 1; a summary of the essential terms of the MDA is also attached to this Resolution as Exhibit 2;

WHEREAS, in addition to payments to UWSA set forth in the MDA that are already authorized pursuant to the O&M Agreement, there are additional items of compensation that will be payable to UWSA by the City, payable by UWSA to the City or payable by the City to third-parties, pursuant to agreements reached between the parties during the negotiation of the MDA; and those additional payments require Council approval;

WHEREAS, those additional compensation items are set forth on Exhibit 3 attached;

WHEREAS, the City believes that it is desirable and in its best interests to execute the MDA and to dissolve its partnership under the O&M Agreement with UWSA, and to effect an orderly transition of the operation and maintenance of the System and certain employees of UWSA to the City, pursuant to the processes set forth in the MDA;

WHEREAS, accordingly the City desires to authorize the Mayor to execute the MDA, on behalf of the City and to further authorize the City's acceptance or payment of the additional compensation items set forth on Exhibit 3 attached;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT the Mayor is authorized to execute with UWSA, United Water Resources and Ondeo the MDA, in a form substantially similar to that attached as Exhibit 1, and the City is authorized to dissolve its partnership under the O&M Agreement with UWSA, and to effect an orderly transition of the operation and maintenance of the System and certain employees of UWSA to the City, pursuant to the processes set forth in the MDA, a copy of which is attached as Exhibit 1, and as summarized in Exhibit 2;

BE IT FURTHER RESOLVED THAT, in addition to payments to UWSA set forth in the MDA that are already authorized pursuant to the O&M Agreement, the City is authorized to accept payment from UWSA and to pay UWSA or third-parties the monetary amounts set forth on Exhibit 3 attached, such payments by the City to be made

out of the Account Nos. identified on Exhibit 3, in accordance with the terms of the O&M Agreement and MDA;

BE IT FURTHER RESOLVED THAT, the City is authorized to accept from UWSA the claim settlement amount of \$6,000,000 set forth on Exhibit 3 attached, such funds to be deposited in Account No. 2J01 469101 B00001;

BE IT FURTHER RESOLVED THAT, upon receipt of an invoice from United Water, approved as to form and in amount by the Commissioner of Watershed Management, the Chief Financial Officer is authorized to disburse payments to United Water and or identified Third-Parties, pursuant to the O&M Agreement and MDA, such payments to be made out of the Account Nos. set forth on Exhibit 3;

BE IT FURTHER RESOLVED THAT the MDA will not be binding upon the City until it has been fully executed by UWSA, United Water Resources and Ondeo, delivered to the City, executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to each of UWSA, United Water Resources and Ondeo.

A true copy,

ughin Johnson

ADOPTED by the Council APPROVED by the Mayor

MAR 03, 2003 MAR 11, 2003



EXHIBIT 1

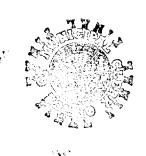


EXHIBIT 2

SUMMARY OF THE PROPOSED MUTUAL DISSOLUTION AGREEMENT February 25, 2003

This summary is provided for discussion purposes only and is not intended to have any legal effect.

1. Affirmation of O&M Agreement.

The O&M Agreement will remain in effect through April 28, 2003, when it will expire. The O&M Agreement will govern the transition period, except as to matters expressly set forth in the Mutual Dissolution Agreement ("MDA"). All rights and obligations that would have survived the expiration of the O&M Agreement had it been in force for the full twenty-year term will survive the expiration of the Agreement on April 28, 2003.

2. Settlement of Existing Claims.

United Water Services Unlimited Atlanta ("UWSA") will pay the City of Atlanta \$6,000,000.00 within 30 days of the effective date of the MDA. Thereafter, the City of Atlanta will pay UWSA \$1,000,000.00. Both parties agree to accept these amounts in settlement of all claims existing between the parties as of December 31, 2002 ("Existing Claims").

3. General Release of All Claims.

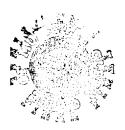
The parties release and discharge one another from all Existing Claims. The claims released include all claims and requests for payment asserted by the parties in various correspondence exchanged before December 31, 2002, including default notices, demand letters, and letters requesting additional compensation.

The release does not affect:

- UWSA's obligations to complete the payments owed to Jordan, Jones and Goulding, Inc.,
- Any claims by the City for indemnification,
- The parties' obligations under the MDA,
- Any claims by the City for certain latent or inconspicuous defects if notice of claim is given by December 31, 2005,
- Any claims arising on or after January 1, 2003, or
- Any claims the parties may have against one another as the result of claims asserted by third parties.

4. Operation and Maintenance of System.

UWSA will operate and maintain the water system through the end of the day on April 28, 2003. The City will begin to operate and maintain the water system at the beginning of the day on April 29, 2003.



5. City's Right to Early Transition.

The City has the right to request that any component of the water system be transferred to City control prior to April 29, 2003. UWSA must consent to the early transfer. If a component is transferred before April 29, 2003, appropriate adjustments will be made to the O&M Fee due to UWSA.

6. Payment of Operation and Maintenance Fee.

The City of Atlanta will pay UWSA the regular O&M Fee for January through March 2003 -- \$1,975,878.17, per month. The City will pay UWSA a slightly larger fee for the month of April 2003 -- \$2,353,254,95.

7. Employee Relations; Retention Bonus Plan; Supplemental Retention Bonus Plan.

The City and UWSA will fund equally a retention bonus plan for employees who work through the expiration of the O&M Agreement on April 28, 2003, and are not employed by UWSA or its affiliates after that date. The City's share of this plan will not exceed \$300,000.00. The City will also fund at its sole cost a supplemental retention bonus plan, which UWSA will implement. The parties will work together to keep employees informed, including of any hiring decisions.

8. Payment of Pass Through Costs.

The City will continue to reimburse UWSA for insurance premiums and sales tax, but will assume responsibility for direct payment of sewer service fees. Exhibit 4 shows the anticipated cost of pass through payments.

9. Performance of Additional Services.

UWSA will complete various capital improvement projects presently in progress and will perform certain services other than those required by the O&M Agreement (for example, utility locates) at the prices and in accordance with the conditions specified on Exhibits 4, 5, and 6. Beginning with applications completed on February 24, 2003, however, all new meter installations will be completed by the City. UWSA will remain responsible for the administrative services associated with these new meter installations, however, through April 28, 2003, and will be paid for these administrative services at the rates specified in Exhibit 6.

10. UWSA Third Party Contracts.

UWSA will assist the City in assuming third party contracts. The City will give UWSA timely notice of its decision not to assume particular contracts.

11. Inventory Reconciliation and Non-Returnable UWSA Fixed Assets.

The parties will jointly conduct a comprehensive inventory of equipment, materials, and supplies, which will be completed on or before April 20, 2003. The City will have the right and option to purchase any assets that the parties agree do not become the property of the City after the transition. Exhibit 7 lists the documents the parties have agreed establish the baseline inventory that was turned over to UWSA at the beginning of the O&M Agreement. The parties will attempt to resolve any disputes with respect to the inventory reconciliation through the internal mediation process set out in the O&M Agreement. If those efforts fail, the parties will retain an appraiser to resolve any disputes as to the value or condition of assets and will ask an outside mediator to help resolve any other disputes.

12. Mutual Non-Disparagement.

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The parties agree that the O&M Agreement is being "amicably dissolved" and is not being "terminated for default." The parties will not make official comments to the public or to the media that are negative or disparaging regarding one another based on events known at the time the MDA becomes effective.

13. No Admission of Liability.

Neither party admits to fault, liability, or wrongdoing.

14. Knowing and Voluntary Release/Execution.

The parties understand the terms of the MDA and have not been forced to sign the agreement.

15. Documentation and Approvals.

The parties will cooperate and work in good faith to take all steps necessary to effectuate the terms of the MDA and to obtain all necessary internal approvals.

16. Entire Agreement.

The written terms of the MDA and the O&M Agreement are the entire, final and complete understanding of the parties. These documents cannot be modified, except in writing.

17. Waiver.

No portion of the MDA will be deemed waived as a result of a waiver of another provision, a previous waiver of a provision, or a future breach of a provision.

18. Severability.

If it is later determined by a court that a term or provision of the MDA is invalid, it will be severed from the MDA.

19. Governing Law and Exclusive Jurisdiction.

The laws of the State of Georgia govern the MDA and the Superior Court of Fulton County has exclusive jurisdiction over any civil actions arising out of or related to the MDA. UWSA, United Water, and Ondeo each consent to the exercise of jurisdiction over them by the Superior Court of Fulton County.

20. Representations of the Parties.

UWSA, United Water, and Ondeo represent that they have authority to enter into the MDA. UWSA represents that to the best of its knowledge, it is operating the system in accordance with applicable law, and in compliance with the permits required to operate the system. UWSA states that it will disclose to the City in Exhibit 8 of the MDA any complaints or allegations of non-compliance that it becomes aware of before turning the System over to the City.

The City states that subject to receiving the approval of the City Council and the Mayor, it has authority to enter the MDA. The City will inform UWSA of any complaints or claims for injury or damage to property that it receives that are in any way related to the operation and maintenance of the System. The capital improvement projects related to EPD Consent Orders for which UWSA has had any responsibility are listed on Exhibit 11.

21. Disclosure of Known Needed System Improvements.

UWSA will provide a listing to the City of any needed system improvements known to it before April 15, 2003. This listing will be Exhibit 9 of the MDA.

22. Contractual Limitations on City's Settlement Authority.

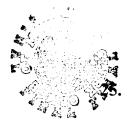
The MDA will not be effective until the agreement has been appropriately adopted, approved, executed, attested to, and sealed by City officials.

23. Notices.

The names and addresses of individuals to whom future notices related to the MDA should be delivered are provided.

24. Third Party Beneficiary.

The MDA is solely for the benefit of the City, UWSA, United Water, Ondeo and their respective successors and permitted assigns.



Legal Action by UWSA, United Water or Ondeo.

UWSA, United Water, and Ondeo are barred from initiating any legal action or terminating the O&M Agreement on any date prior to the effective date of the MDA.

26. External Non-Binding Mediation.

If the parties are unable to resolve a dispute by using the internal mediation procedures provided in the O&M Agreement, they will jointly retain an outside mediator and cooperate and participate in a mediation session.

27. Collection Rate Formula During The Transition Period.

The parties agree to use during the transition period the collection rate formula utilized by the City Independent Auditor in her study of the Collection Rate.

28. Letter of Credit.

The City will return UWSA's current Letter of Credit within two (2) business days of receipt by the City of a substitute Letter of Credit in the amount of \$3,000,000.00 with an expiration no earlier than December 31, 2003.

29. Definition.

The word "Term" in the O&M Agreement shall now mean the period from January 1, 1999 through and including April 28, 2003.

30. Third Party Damages.

UWSA will repair all damage to the system caused by third parties through April 28, 2003. Upon providing the City with documentation of the damage, the identity of the responsible parties, and the cost of the repair, the City will pay UWSA 50% of the cost of repair, not to exceed \$50,000 per month.

31. Media Relations.

The parties agree to give each other notice of media contacts and UWSA agrees not to communicate to the media about the System without first giving notice to the City. The media relations protocol is detailed on Exhibit 10.

32. Natural Gas and Electric Adjustment.

In accordance with standing practice, the parties will not make any claims against one another for any natural gas or electrical usage adjustments.



EXHIBIT 3

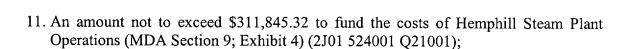
ADDITIONAL COMPENSATION ITEMS UNDER MDA:

Compensation Payable to City from UWSA:

1. \$6,000,000 in settlement of Existing Claims of the City against UWSA, existing prior to January 1, 2003 (MDA; Section 2.1);

Compensation Payable to UWSA from City:

- 1. \$1,000,000 in settlement of Existing Claims of UWSA against the City, existing prior to January 1, 2003 (MDA; Section 2.2) (2J01 524001 Q21001);
- 2. For the O&M Fee payable for the period beginning April 1, 2003, through and including April 28, 2003, an additional amount of \$377,376.78, such that the original monthly O&M Fee ordinarily payable to UWSA for that month of \$1,975,878.17 is increased to \$2,353,254.95 (MDA; Sections 6.2 and 6.3) (2J01 524001 Q21001);
- 3. An amount not to exceed \$300,000 for the City's share of the Retention Bonus Plan (MDA; Sections 7.1 and 7.15; Exhibit 4) (2J01 524001 Q21001);
- 4. An amount not to exceed \$400,000 for the City's Supplemental Retention Bonus Plan, to be disbursed at the City's sole cost and discretion (MDA; Section 7.2) (2J01 524001 Q21001);
- 5. An amount not to exceed \$100,000 to enable the City to exercise its Option and/or Right of First Refusal to acquire from UWSA any Non-Returnable UWSA Fixed Assets (MDA; Section 11) (2J21 575001 Q22001);
- 6. An amount not to exceed \$270,564.92 to fund the costs of utility locates (MDA Section 9; Exhibit 4) (2J01 524001 Q21001);
- 7. An amount not to exceed \$2,333,013.80 to fund the costs of new meter installations (MDA Section 9; Exhibits 4 and 6) (2J01 524001 Q21001);
- 8. An amount not to exceed \$577,909.28 to fund the costs of new fire service (MDA Section 9; Exhibits 4 & 6) (2J27 574001 Q27J08039999);
- 9. An amount not to exceed \$67,800 to fund the costs of sludge dewatering (MDA Section 9; Exhibit 4) (2J27 574001 Q27J08039999);
- 10. An amount not to exceed \$102,511.32 to fund the costs of sodium hypochlorite (MDA Section 9; Exhibit 4) (2J01 524001 O21001);



- 12. An amount not to exceed \$67,666.68 to fund the costs of Hemphill Steam Plant Maintenance (MDA Section 9; Exhibit 4) (2J01 524001 Q21001);
- 13. An amount not to exceed \$387,228 to fund the costs of Insurance Pass Through Costs (MDA Section 8; Exhibit 4) (2J01 524001 Q21001);
- 14. An amount not to exceed \$91,020.68 to fund the costs of Sales Tax Pass Through Costs (MDA Section 8; Exhibit 4) (2J01 524001 Q21001);
- 15. An amount not to exceed \$335,097 to fund the costs of Main Breaks (MDA Section 9; Exhibit 4) (2J01 524001 Q21001);
- 16. An amount not to exceed \$32,000 to fund the costs of Northside Pump Station Staffing (MDA Section 9; Exhibit 4) (2J27 574001 Q27J08039999);
- 17. An amount of \$21,000 to fund the costs of MCRR 353; CFWPS; Pump #2 Repairs (MDA Section 9; Exhibit 5) (2J01 524001 Q21001);
- 18. An amount of \$33,130 to fund the costs of MCRR 365; Raw Water Pump #8 CRWPS (MDA Section 9; Exhibit 5) (2J27 573001 Q24J02049999);
- 19. An amount not to exceed \$200,000 to fund the costs of MCRR 375; 72" Raw Water Repairs (MDA Section 9; Exhibit 5) (2J27 573001 Q24J02049999);
- 20. An amount not to exceed \$200,000 to fund the costs of repair to the System as a result of damages to it by Third-Parties (MDA; Sections 9 and 30; Exhibit 4) (2J27 573001 Q24J02049999);

Additional Compensation Payable To Third-Parties Pursuant To MDA:

1. An amount not to exceed \$20,000 in order to allow the City to fund its portion of the costs of hiring an appraiser or mediator in the event of a dispute under the MDA (MDA; Sections 11.6, and 26) (2J01 524001 Q21001).

Summary of Additional Payments:

- 1. By the City to UWSA: An amount not to exceed \$7,208,163.40 (which sum includes \$300,000 for an Employee Retention Plan and \$400,000 for a Supplemental Employee Retention Plan [such Supplemental Plan to be disbursed at the City's discretion]);
- 2. By the City to Third-Parties: An amount not to exceed \$20,000; and
- 3. By UWSA to the City: \$6,000,000.

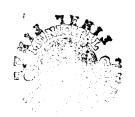
Atlanta City Council

Regular Session

03-R-0192 Mutual Dissolution Agreement with United Water Services ADOPT ON SUB

> YEAS: 12 NAYS: 1 ABSTENTIONS: 0 NOT VOTING: 3 EXCUSED: 0 ABSENT 0

Y Smith NV Archibong Y Moore Y Mitchell Y Starnes Y Fauver N Martin NV Norwood Y Young Y Shook Y Maddox Y Willis Y Winslow Y Muller Y Boazman NV Woolard Y Mitchell NV Norwood



EXHIBITS

- 1. Letter Agreement
- 2. First Memorandum of Understanding
- 3. Transition Memorandum of Understanding
- 4. Summary of Additional Services
- 5. Summary of Additional Services Authorizations
- 6. Fee Schedule for Meter and Fire Services
- 7. List of Schedule 15 Inventory
- 8. Disclosure of Conformance with Applicable Laws
- 9. Disclosure of Known Needed System Improvements
- 10. Media Relations Protocol
- 11. Disclosure of Capital Improvement Projects Related to EPD Consent Orders

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

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PULL ORIGINAL FOR COPY OR TO VIEW

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